

Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

Paper 1  
Filed: December 1, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

EYAL RAZ  
Junior Party  
(U.S. Application 10/229,208),

v.

ARTHUR M. KRIEG AND JOEL N. KLINE  
Senior Party  
(U.S. Application 09/337,584).

---

Patent Interference No. 105,674 (MPT)  
(Technology Center 1600)

---

DECLARATION - Bd.R. 203(b)<sup>1</sup>

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as

---

<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. ' 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 not corresponding to the count(s) appear in Parts E and F of this  
2 DECLARATION.

3 **Part B. Judge managing the interference**

4 Administrative Patent Judge Michael P. Tierney has been designated  
5 to manage the interference. Bd. R. 104(a).

6 **Part C. Standing order**

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies  
8 this DECLARATION. The STANDING ORDER applies to this  
9 interference.

10 **Part D. Initial conference call**

11 A telephone conference call to discuss the interference is set for  
12 2:00 p.m. on December 17, 2008 (the Board will initiate the call).

13 No later than four business days prior to the conference call, each  
14 party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions  
15 (Bd. R. 120; Bd. R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

16 A sample schedule for taking action during the motion phase appears  
17 as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss  
18 the schedule prior to the conference call and to agree on dates for taking  
19 action. A typical motion period lasts approximately eight (8) months.  
20 Counsel should be prepared to justify any request for a shorter or longer  
21 period.



1 SO ¶ 154.2.1. The senior party is responsible for initiating settlement  
2 discussions. SO ¶ 126.1.

3 **Part F. Count and claims of the parties**

4 **Count 1**

5 A method of treating asthma according to claim 58 of  
6 U.S. Application 10,229,208 or claim 44 of U.S. Application 09/337,584.

7  
8 The claims of the parties are:

9 Krieg, U.S. Application 09/337,584: 42-47, 49-53, 56-57, 82-85, 90,  
10 92, 94, 96, 98, 100, 102-103

11 Raz, U.S. Application 10/229,208: 58

12

13 The claims of the parties which correspond to Count 1 are:

14 Krieg, U.S. Application 09/337,584: 42-45, 47, 49-53, 57, 90, 92,  
15 94, 96, 98, 100, 102-103

16 Raz, U.S. Application 10/229,208: 58

17

18 The claims of the parties which do not correspond to Count 1, and  
19 therefore are not involved in the interference, are:

20 Krieg, U.S. Application 09/337,584: 46,56,82-85

21 Raz, U.S. Application 10/229,208: None

22

23 The parties are accorded the following benefit for Count 1:

24

25

1                   Krieg is accorded benefit of the filing dates of the following  
2 applications:

- 3                   i)     U.S. Application 08/960,774, filed  
4                             October 30, 1997, now U.S. Patent 6,239,116,  
5                             issued May 29, 2001.  
6                   ii)    U.S. Application 08/738,652, filed  
7                             **October 30, 1996**, now U.S. Patent 6,207,646,  
8                             issued March 27, 2001.

9  
10                   Raz is accorded benefit of the filing date of the following  
11 applications:

- 12                   i)     U.S. Application 09/235,742, filed  
13                             January 21, 1999, now U.S. Patent 6,498,148,  
14                             issued December 24, 2002;  
15                   ii)    U.S. Application 08/927,120, filed  
16                             **September 5, 1997**.

1           **Part G. Heading to be used on papers**

2           The following heading must be used on all papers filed in this  
3 interference, see SO ¶ 106.1.1:  
4

5                   UNITED STATES PATENT AND TRADEMARK OFFICE  
6  
7

8  
9                   BEFORE THE BOARD OF PATENT APPEALS  
10                   AND INTERFERENCES  
11

12  
13  
14                   EYAL RAZ  
15                   Junior Party  
16                   (U.S. Application 10/229,208),  
17

18                   v.  
19

20                   ARTHUR M. KRIEG AND JOEL N. KLINE  
21                   Senior Party  
22                   (U.S. Application 09/337,584).  
23

24  
25                   Patent Interference No. 105,674 (MPT)  
26                   (Technology Center 1600)  
27

28  
29           **Part H. Order form for requesting file copies**

30           When requesting copies of files, use of SO Form 4 will greatly  
31 expedite processing of the request. Please attach a copy of Parts E and F of  
32 this DECLARATION with a hand-drawn circle around the patents and  
33 applications for which a copy of a file wrapper is requested.  
34

35                                   /Michael P. Tierney/  
36                                   Administrative Patent Judge  
37

1 cc (via electronic mail):  
2  
3 Attorney for RAZ:  
4  
5 BOZICEVIC, FIELD & FRANCIS LLP  
6 1900 University Avenue  
7 Suite 200  
8 East Palo Alto, CA 94303  
9  
10 Attorney for KRIEG:  
11  
12 Helen C. Lockhart  
13 WOLF GREENFIELD & SACKS PC  
14 600 Atlantic Avenue  
15 Boston, MA 02210